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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,892	10/10/2001	James A. Kremens	REEL 0101 PUSP	1352
7590	08/19/2005		EXAMINER	
Kevin J. Heinl Brooks & Kushman P.C. 22nd Floor 1000 Town Center Southfield, MI 48075-1351			LIN, KENNY S	
			ART UNIT	PAPER NUMBER
			2154	
			DATE MAILED: 08/19/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/973,892	KREMENS ET AL.
	Examiner Kenny Lin	Art Unit 2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 10-18, 20-22 and 24-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 10-18, 20-22, 24 and 25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-8, 10-18, 20-22 and 24-25 are presented for examination. Claims 9, 19 and 23 are canceled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following term lack proper antecedence basis:

- i. Claim 25, line 2 – a desired tempo.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert et al (hereinafter Hoffert), US 6,374,260, in view of Davis et al (hereinafter Davis), US 5,969,716, and Drosset et al (hereinafter Drosset), US 6,662,231.

6. Hoffert and Davis were cited in the previous office action.

7. As per claim 1, Hoffert taught the invention substantially as claimed including a network-based system for centrally sampling distributed multimedia content and facilitating the exchange of multimedia content between a plurality of multimedia content vendors and a plurality of multimedia content purchasers, the system comprising:

- a. A plurality of distributed multimedia source computers (col.3, lines 21-29);
- b. A multimedia warehouse configured to receive and archive multimedia files uploaded from the plurality of distributed multimedia source computers (col.7, lines 54-61, col.8, lines 15-21, 33-56; central site); and
- c. At least one multimedia sampling computer configured to download one or more multimedia files archived in the multimedia warehouse (col.8, lines 23-29, col.11, lines 7-12).

8. Hoffert did not specifically teach to play the downloaded multimedia files in synchronization with a project file and host purchasing or licensing transactions relating to selected multimedia content. Davis taught a multimedia sampling computer for playing downloaded multimedia files in synchronization with a project file (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; real-time media signal). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert and Davis because Davis' teachings of multimedia operations allows the users to

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manipulate the downloaded multimedia from Davis' multimedia warehouse and create customized media presentations (col.1, lines 50-61, col.4, lines 32-44). Hoffert and Davis did not specifically teach the multimedia sampling computer to host purchasing or licensing transactions relating to selected multimedia content. Drosset taught a network-based system for distributing multimedia content and host purchasing or licensing transactions relating to selected multimedia content (col.2, lines 44-56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis and Drosset because Drosset's teaching of allocating payment of license of multimedia files enable Hoffert and Davis' system to protect the rights of the owner of the multimedia contents (see Drosset, col.1, lines 25-31).

9. As per claim 2, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert further taught that the multimedia warehouse comprises a network server computer system in operable communication with at least one database (col.8, lines 6-14, 23-32, 47-56).

10. As per claim 3, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert further taught that the multimedia files are selected from a group consisting of audio files, video files, combined audio and video files and picture files (col.3, lines 36-43).

11. As per claim 4, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Davis further taught that the project file is selected from a group consisting of audio

files, video files, combined audio and video files and picture files (col.7, lines 54-64, col.9, lines 21-29).

12. As per claim 5, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Davis further taught that the at least one multimedia sampling computer is additionally configured to search the multimedia warehouse for multimedia files that best-match user-defined search criteria (col.9, lines 35-50).

13. As per claim 8, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Davis further taught that the at least one multimedia sampling computer is additionally configured to edit playback attributes of the downloaded multimedia files (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; playback rate).

14. As per claim 10, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert further taught that the distributed multimedia source computers, the multimedia warehouse and the multimedia sampling computers are configured to host online communication between users of the multimedia source computers and users of the multimedia sampling computers (figs.1 and 3).

15. As per claim 11, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert further taught that the distributed multimedia source computers, the

multimedia warehouse and the multimedia sampling computers are configured to monitor version control for multimedia file revisions (col.8, lines 57-67).

16. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert, Davis and Drosset as applied to claim 1 above, and further in view of "Official Notice".

17. As per claim 6, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert, Davis and Drosset did not specifically teach that the search criteria comprise file type, file format, composition name, company name, composer name, project name, tempo and description. However, Official Notice is taken that the limitations narrowed by these claims are consider obvious and furthermore a matter of design choice. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis and Drosset and further uses various categories to establish a search criteria to narrow down the search to return better search results.

18. As per claim 12, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert, Davis and Drosset did not specifically teach that the multimedia sampling computer has an e-mail system for inviting selected multimedia source computers to have access to the project file. However, Official Notice is taken that the concept and advantage of using e-mail for communication is well known and expected in the art. It would have been obvious to one of ordinary skill in the art the time the invention was made to combine the teachings of

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Hoffert, Davis and Drosset and further provide e-mailing implementations to the computers to enable communications between the users of the computers.

19. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert, Davis and Drosset as applied to claim 6 above, and further in view of Kravitz et al (hereinafter Kravitz), US 2003/0164844.

20. As per claim 7, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert, Davis and Drosset did not specifically teach that a desired tempo for multimedia content may be specified by a user tapping on a peripheral device that is operatively connected to at least one multimedia sampling computer. Kravitz taught a method of multimedia searching by allowing users to tap on a peripheral device that is operatively connected to at least one multimedia sampling computer to specify a desired temp for multimedia content (abstract, pp. 0010, 0043, 0062-0082). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis, Drosset and Kravitz because Kravitz's teaching of multimedia searching enables Hoffert, Davis and Drosset's system to conduct multimedia search using multiple keywords and parameters (see Kravitz, abstract, pp. 0010, 0043).

21. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert, Davis and Drosset as applied to claim 1 above, and further in view of Gustman, US 5,832,499.

22. Gustman was cited in the previous office action.

23. As per claim 13, Hoffert, Davis and Drosset taught the invention substantially as claimed in claim 1. Hoffert further taught to store multimedia files at a local storage (col.8, lines 22-28). Hoffert, Davis and Drosset did not specifically teach that the multimedia warehouse has a local server that queries a web server and retrieves new multimedia files for the multimedia warehouse, the sampling computer having an application that automatically associates an identified user with the local server, the sampling computer upon recognizing the identified user and determining that the local server is available, selects files from the local server, the sampling computer upon recognizing the identified user and determining that the local server is not available, obtains files from a web server. Gustman taught to include a local server that queries a web server and retrieves new multimedia files for the multimedia warehouse, the sampling computer having an application that automatically associates an identified user with the local server, the sampling computer upon recognizing the identified user and determining that the local server is available, selects files from the local server, the sampling computer upon recognizing the identified user and determining that the local server is not available, obtains files from a web server (col.5, lines 56-67, col.6, lines 1-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis, Drosset and Gustman because Gustman's teachings of decentralized distribution helps Hoffert, Davis and Drosset's method to speed up the searching process by first searching in local cache to see if the multimedia content was previously retrieved and stored.

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24. Claims 14-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert et al (hereinafter Hoffert), US 6,374,260, in view of Davis et al (hereinafter Davis), US 5,969,716, Eberman et al (hereinafter Eberman), US 6,173,287, and Mark Davis (hereafter '048), US 5,706,048.

25. Eberman and '048 were cited in the previous office action.

26. As per claim 14, Hoffert taught the invention substantially as claimed including a network-based method for marketing multimedia, the method comprising:

- a. Receiving multimedia files from a plurality of distributed multimedia providers into an online multimedia warehouse (col.3, lines 21-29, col.7, lines 54-61, col.8, lines 15-21, 33-56);
- b. Providing the multimedia files within the online multimedia warehouse to distributed multimedia consumers for download (col.8, lines 23-29, col.11, lines 7-12).

27. Hoffert further taught to bill multimedia consumer usage of storage (col.9, lines 54-67). Hoffert did not specifically teach that the multimedia consumers sample downloaded multimedia files in synchronization with a project file and to sell the downloaded multimedia file to the multimedia consumer. Davis taught to sample downloaded multimedia files in synchronization with a project file (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; real-time media signal). It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to combine the teachings of Hoffert and Davis because Davis' teachings of multimedia operations allows the users to manipulate the downloaded multimedia from Davis' multimedia warehouse and create customized media presentations (col.1, lines 50-61, col.4, lines 32-44). Hoffert and Davis did not specifically teach to sell or license the downloaded multimedia file to the multimedia consumers. Eberman taught that the multimedia files can be sold to consumers (col.1, lines 11-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis and Eberman because Eberman's teaching of selling multimedia contents from a database enables Hoffert and Davis's system to bill the users for downloading multimedia from the multimedia warehouse (col.1, lines 41-48). Hoffert, Davis and Eberman did not specifically teach to present a multimedia consumer's request for a custom multimedia file to a multimedia provider. '048 taught to send request for a custom multimedia file to a multimedia provider (col.6, lines 57-63, col.7, lines 9-12, 30-37; fig.8-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis, Eberman and '048 because '048's teachings of requesting custom video enables the users of Hoffert, Davis and Eberman's method to request specific desired multimedia to meet their need.

28. As per claim 15, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Hoffert further taught that the multimedia files are selected from a group consisting of audio files, video files, combined audio and video files and picture files (col.3, lines 36-43).

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29. As per claim 16, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Davis further taught that the project file is selected from a group consisting of audio files, video files, combined audio and video files and picture files (col.7, lines 54-64, col.9, lines 21-29).

30. As per claim 17, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Davis further taught to search the multimedia warehouse for multimedia files that best-match user-defined search criteria (col.9, lines 35-50).

31. As per claim 18, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Davis further taught that additionally editing playback attributes of the downloaded multimedia files (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; playback rate).

32. As per claim 20, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. '048 further taught to comprise accepting or rejecting the multimedia consumer's request for the custom multimedia file (col.7, lines 9-12, 30-39, col.8, lines 19-26, 65-67, col.9, lines 1-3; figs. 8-9).

33. As per claim 21, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Hoffert further taught the method to comprise presenting a multimedia

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consumer's request for a revision to a multimedia file to a multimedia provider (col.8, lines 57-67, col.9, lines 1-29).

34. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffert, Davis, Eberman and '048 as applied to claim 14 above, and further in view of Kravitz et al (hereinafter Kravitz), US 2003/0164844.

35. As per claim 25, Hoffert, Davis, Eberman and '048 taught the invention substantially as claimed in claim 14. Hoffert, Davis, Eberman and '048 did not specifically teach to tap a desired temp on a input device to specify a desired tempo for selection of multimedia content. Kravitz taught a method of multimedia searching by allowing users to tap on a input device to specify a desired temp for selection of multimedia content (abstract, pp. 0010, 0043, 0062-0082). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hoffert, Davis, Drosset and Kravitz because Kravitz's teaching of multimedia searching enables Hoffert, Davis and Drosset's system to conduct multimedia search using multiple keywords and parameters (see Kravitz, abstract, pp. 0010, 0043).

36. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustman, US 5,832,499, in view of Davis et al (hereinafter Davis), US 5,969,716, "Official Notice", and Eberman et al (hereinafter Eberman), US 6,173,287.

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37. As per claim 22, Gustman taught the invention substantially as claimed including a computer-readable storage medium containing computer executable code for instructing one or more computers to:

- a. Receive input defining multimedia file search criteria (col.5, lines 1-6, col.9, lines 30-41);
- b. Search one or more database for multimedia files that best-match the search criteria (col.5, lines 6-22, col.9, lines 41-45);
- c. Present output containing a selectable listing of the multimedia files that best-match the search criteria to a user (col.5, lines 20-34, col.9, lines 44-67); and
- d. Present output playing the selected multimedia files (col.5, lines 22-34, col.9, lines 64-67).

38. Gustman did not specifically teach the receive user input selecting one or more of the presented multimedia files and present output playing the selected multimedia files in synchronization with a project file or receive user input selecting one or more multimedia files to purchase or license. Davis taught to play retrieved multimedia files in synchronization with a project file (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; real-time media signal). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Gustman and Davis because Davis' teachings of multimedia operations allows the users to manipulate the downloaded multimedia from Davis' multimedia warehouse and create customized media presentations (col.1, lines 50-61, col.4, lines 32-44). Gustman and Davis did not specifically teach to select one or more of the presented

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multimedia files. However, Official Notice is taken that it is obvious to enable a user to input selection of one or more presented multimedia for playing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Gustman, Davis and further enables user to input selection form the user interface to select the desired multimedia file from the search results to caching and playing rather than caching all returned files. Gustman and Davis did not specifically teach to instruct the one or more computers to receive user input selecting one or more multimedia files to purchase or license. Eberman taught that the multimedia files can be purchased by the consumers (col.1, lines 11-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Gustman, Davis and Eberman because Eberman's teaching of selling multimedia contents from a database enables Gustman and Davis's system to bill the users for retrieving multimedia from the database (see Eberman, col.1, lines 41-48).

39. As per claim 24, Gustman, Davis and Eberman taught the invention substantially as claimed in claim 22. Davis further taught to instruct the one or more computers to edit playback attributes of the selected multimedia files (col.5, lines 33-45, 55-61, col.7, lines 37-54, col.9, lines 10-29, 47-53; playback rate).

Response to Arguments

40. Applicant's arguments with respect to claims 1, 14, 21 and 22 have been considered but are moot in view of the new ground(s) of rejection.

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41. In the remark, applicant argued (1) Hoffert, Davis, Eberman and '048 references do not teach "...request for a custom multimedia file to a multimedia provider" since the "custom video" in '048 patent refers to an existing video file that is then streamed over a wireless network, where the term "custom" simply refers to the fact that the video file is selected by the user and available in real time on demand. In contrast, the present invention uses the phrase custom multimedia file to refer to a file that is created in response to a user request. That user request specifies properties of the desired new, yet to be created media content file. (2) The references do not teach the limitation of claim 21 "presenting a multimedia consumer's request for revision to a multimedia provider." Hoffert patent deal with a method for updating files in centralized database that have been edited on their source computers. The claim invention is different and claims about a user specifying custom revision requests for multimedia files.

42. Examiner traverse the arguments:

43. As to points (1) and (2), although applicant has pointed out that the intended claim features in claim 14 and 21 are different from the interpretation of the examiner, the claim languages can still be interpreted according to the examiner interpretation. The claims stand rejected since the references clearly read on the claimed language according to the examiner's interpretation. Applicant is suggested to amend the claims to further defined the claims to clearly present the actual intended features as stated in the remark. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., user request specifies properties of the desired new, yet to be created media content file;) are not recited in the rejected claim(s). Although the claims

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are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Because Applicants have failed to challenge any of the Examiner's "Official Notices" stated in the previous office action in a proper and reasonable manner, they are now considered as admitted prior art. See MPEP 2144.03

Conclusion

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baumgartner et al, US 5,642,171.

Kaplan et al, US 2001/0056434.

45. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

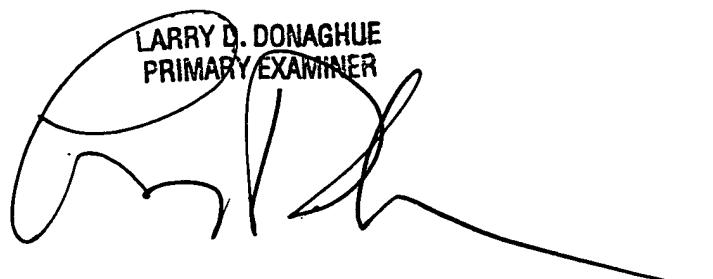
46. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (571) 272-3968. The examiner can normally be reached on 8 AM to 5 PM Tue.-Fri. and every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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ksl
August 16, 2005

LARRY D. DONAGHUE
PRIMARY EXAMINER

A handwritten signature in black ink. The name "LARRY D. DONAGHUE" is written in a bold, sans-serif font, enclosed within a roughly drawn oval shape. Below the name, the words "PRIMARY EXAMINER" are written in a smaller, regular font. A large, flowing cursive signature follows the printed name, extending from the right side of the oval towards the bottom right corner of the page.